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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

KURT DINESO ANDRILLION,

Defendant and Appellant.

C062033

(Super. Ct. No.
08F00909)

In a "global resolution," defendant Kurt Dineso Andrillon resolved three cases pending against him by pleading no contest to robbery (Pen. Code, § 211)¹ in case No. 08F00909, and possession of a firearm by a felon (§ 12021, subd. (a)(1)) in case No. 08F005822. Defendant denied the enhancement allegation in both cases, which alleged that defendant was convicted of robbery in 1982.

¹ Further undesignated references are to the Penal Code.

In exchange for defendant's plea, the prosecution dismissed the remaining probation violation charge in case No. 04F00059, in which defendant was convicted of possessing stolen property (§ 496, subd. (a)). The prosecution also agreed the plea would preserve defendant's right to challenge the enhancement allegation. A court trial was then held on the enhancement allegation.

At the trial on the enhancement allegation, defendant argued the prior conviction for robbery was not a felony conviction because imposition of his sentence was suspended by the court. The trial court explained to defendant that whether the sentence was imposed was irrelevant; he had been convicted of the felony. The court thus rejected defendant's argument and found true the enhancement allegation. Defendant was then sentenced consistent with his plea, to an aggregate term of seven years four months in state prison.

In case No. 08F00909, defendant was sentenced to three years in state prison, doubled for the prior conviction. He was ordered to pay a \$1,200 restitution fine, and an additional \$1,200 restitution fine, stayed unless parole was revoked, and restitution to the victim in an amount to be determined. Defendant was further ordered to pay a \$10 fine for the crime prevention program (§ 1202.5), a \$20 court security fee (§ 1465.8, subd. (a)(1)), a main jail booking fee of \$242.29 (Gov. Code, § 29550.2), and a main jail classification fee of \$27.22 (Gov. Code, § 2950.2). He also was awarded 329 days of credit for time served.

In Case Number 08F005822, defendant was sentenced to a consecutive term of eight months, doubled to 16 months for the prior conviction. He was ordered to pay a \$2,000 restitution fine, and an additional \$2,000 restitution fine, stayed unless parole was revoked. Defendant was further ordered to pay a \$20 court security fee (\$ 1465.8, subd. (a)(1)), and the court waived the main jail booking and classification fees in the "interests of justice." Defendant also was awarded 181 days of credit for time served.

The remaining probation violation in case No. 04F00059 was dismissed and defendant's probation in that case terminated.

Defendant filed notices of appeal on June 19, 2009, and June 26, 2009. His request for a certificate of probable cause (\$ 1237.5) was denied.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and asks us to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant filed a supplemental brief raising claims of error which we reject for the reasons stated below.

As he argued in the trial court, defendant claims his 1981 conviction for robbery cannot be a felony conviction because imposition of his sentence was suspended. As was already explained to defendant by the trial court, whether sentence is

stayed, imposed, or suspended, a felony conviction remains a felony conviction. (§ 667, subd. (d).)²

Defendant further argues that the court's decision to order probation on his prior conviction converted the felony conviction for robbery into a misdemeanor. In support of his argument, defendant relies on section 17, subdivision (b)(3): "When a crime is punishable in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances: [¶] . . . [¶] (3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor."

He also relies on section 667, subdivision (d): "The determination of whether a prior conviction is a prior felony conviction for purposes of subdivision (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor." What defendant fails to include in his

² Section 667, subdivision (d) provides in relevant part that "[n]one of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), inclusive: [¶] (A) The suspension of imposition of judgment or sentence. [¶] (B) The stay of execution of sentence. . . ."

analysis, however, is the fact that robbery is, by definition, a felony.

A felony is defined as "a crime which is punishable with death or by imprisonment in the state prison." (§ 17, subd. (a).) Robbery is defined as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (§ 211.) Robbery is punishable by a term in state prison, the length of which may be anywhere from two to nine years. (§ 213.) Thus, according to the statutes, robbery is a felony, not a crime for which a fine or county jail term may be imposed.

Accordingly, the trial court's decision to exercise its discretion and grant defendant probation on the conviction in 1982, does not, indeed cannot, convert the conviction to a misdemeanor. Defendant's argument is, therefore, without merit.³

Defendant also challenges the evidence upon which the trial court relied in determining that defendant was convicted of robbery in 1981. No objections to the evidence were raised in the trial court. Accordingly, any objections have been forfeited. (*People v. Scott* (1994) 9 Cal.4th 331, 353.) In any event, the evidence was admissible.

"Except as otherwise provided by statute, all relevant evidence is admissible." (Evid. Code, § 351.) Here, the trial

³ Defendant's writ of habeas corpus was denied on the same ground.

court relied upon numerous written documents to find defendant was previously convicted of robbery, all of which were admissible. The trial court considered two section 969b prison packets, certified by the Director of the Department of Corrections through his agent. The language of section 969b itself makes such evidence admissible to prove defendant's prior conviction. (§ 969b.)

The court also considered defendant's "certified RAP sheet," two probation officers' reports, the complaint in Los Angeles County Case no. A-905411, and a copy of a minute order in Los Angeles County Case no. A198969. Each of these documents is a business record, and not subject to a hearsay objection. (Evid. Code, § 1271.) Moreover, each of them is relevant to prove defendant was convicted of robbery in 1982 in Los Angeles County, and none of it unduly prejudiced defendant at trial. (Evid. Code, § 352 [relevant evidence that is prejudicial is inadmissible].) Accordingly, there was no error in admitting the evidence.

Defendant also contends there was insufficient evidence to sustain his conviction for robbery in case No. 08F00909. Because defendant pled no contest to the charge of robbery in case No. 08F00909 he cannot raise this challenge without a certificate of probable cause, which the trial court refused to grant. (§ 1237.5.) Accordingly, we reject this argument as well.

The recent amendments to Penal Code section 4019 do not operate to modify defendant's entitlement to credit, as he was

committed for a serious felony. (Pen. Code, § 4019, subds. (b), (c); Stats. 2009-2010, 3d Ex. Sess., ch. 28, § 50.)

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

SIMS, J.

HULL, J.